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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 JOE J.W. ROBERTS, JR.,

8 Plaintiff,

9 v.

10 VILMA KHOUNPHIXAY, et al.,

11 Defendants.

CASE NO. 2:18-cv-00746-MJP-BAT

**ORDER DENYING MOTION TO  
AMEND COMPLAINT WITHOUT  
PREJUDICE**

12 Before the Court is Plaintiff's motion "requesting to amend under Rule 15(a)." Dkt. 40.  
13 Plaintiff has not attached a copy of his proposed amended complaint. In addition, Plaintiff does  
14 not address how his undisclosed amendment moots Defendants' pending motion for judgment on  
15 the pleadings (Dkt. 33) or Defendants' request for a protective order staying discovery pending  
16 adjudication of the motion for judgment on the pleadings (Dkt. 35). Accordingly, Plaintiff's  
17 motion to amend is denied without prejudice.

18 **DISCUSSION**

19 Pursuant to Rule 15(a)(1) Plaintiff may only amend as a matter of right, "21 days after  
20 service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f),  
21 whichever is earlier." Defendants served their Answer on August 13, 2018. Dkt. 21, at 1.  
22 Plaintiff filed his Motion to Amend on October 5, 2018 (Dkt. 40) – that is more than 21 days  
23 after August 13, 2018. Thus, Plaintiff is not eligible by rule to amend without a Court order. In  
addition, a party who moves for leave to amend, must attach a copy of the proposed amended

1 pleading as an exhibit to his motion. The party must indicate on the proposed amended pleading  
2 how it differs from the pleading that he is amending by bracketing or striking through the text to  
3 be deleted and underlining or highlighting the text to be added. The proposed amended pleading  
4 must not incorporate by reference any part of the preceding pleading, including exhibits. LCR  
5 15.

6 Moreover, Defendants correctly note they would be entitled to qualified immunity from  
7 suit (including all discovery) even if Plaintiff can state a claim sufficient to defeat their motion  
8 for judgment on the pleading, if the Court determines that there is no clearly established law  
9 proscribing their conduct. Therefore, the Court, under separate Order, has granted Defendants'  
10 motion for protective order staying all discovery pending adjudication of Defendants' motion for  
11 judgment on the pleadings. If Defendants' motion is denied, the stay of discovery will be lifted  
12 and a new discovery deadline will be assigned to the parties.

13 Based on the foregoing, Plaintiff's motion to amend (Dkt. 40) is **DENIED** without  
14 prejudice. If Plaintiff wishes to amend his complaint, he must provide the Court and Defendants  
15 with a proposed amended pleading consistent with LCR 15.

16 DATED this 16th day of October, 2018.

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20 BRIAN A. TSUCHIDA  
21 Chief United States Magistrate Judge  
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